

VZCZCXYZ0000  
PP RUEHWEB

DE RUEHUL #1633/01 2880821  
ZNR UUUUU ZZH  
P 150821Z OCT 09  
FM AMEMBASSY SEOUL  
TO RUEHC/SECSTATE WASHDC PRIORITY 5929  
INFO RUCNKOR/KOREA COLLECTIVE  
RUEHRC/DEPT OF AGRICULTURE WASHDC  
RUCPDO/DEPT OF COMMERCE WASHDC 1889  
RUEAUSA/DEPT OF HHS WASHDC  
RUEAWJA/DEPT OF JUSTICE WASHINGTON DC  
RUEHC/DEPT OF LABOR WASHINGTON DC  
RUEATRS/DEPT OF TREASURY WASHINGTON DC

UNCLAS SEOUL 001633

SENSITIVE  
SIPDIS

STATE PASS TO USTR FOR RACHEL BAE, BRYAN TRICK, SU-JIN YOO  
STATE FOR EAP/K - SHOLIDAY AND EAP/EP - MDASTIN

E.O. 12958: N/A  
TAGS: [ETRD](#) [KIPR](#) [KS](#)  
SUBJECT: ROK: TOPSITES CONFERENCE YIELDS STRATEGY FOR  
INVESTIGATION AND ENFORCEMENT

11. (U) This cable is sensitive but unclassified and is  
not/not intended for Internet distribution.

12. (SBU) Summary: Representatives of the recording and movie  
industry and EmbOffs met on September 24 with ROKG and law  
enforcement officials to reintroduce the issue of topsites  
and revive investigative efforts against topsites and their  
users. Topsites are servers that contain massive amounts of  
pirated media, and are often the first landing-place for a  
pirated file before it migrates through more accessible  
file-sharing channels. On the U.S. side, Econoff and  
representatives of the International Federation of the  
Phonographic Industry (IFPI), the Motion Picture Association  
(MPA), and Immigration and Customs Enforcement (ICE) attended  
the conference. The Korean side included representatives of  
the Ministry of Foreign Affairs and Trade (MOFAT), Ministry  
of Culture Sports and Tourism (MCST), Ministry of Justice  
(MOJ), and the Seoul District Prosecutors' Office. The  
meeting succeeded in clarifying the technical aspects of  
topsites and established a basic framework for investigation  
that will involve rightsholder groups and the Korean  
Prosecutors Office. IFPI's representative recently told  
Econoff that IFPI will submit an evidence pack against a  
topsite to the Seoul District Prosecutors' Office during the  
week of October 19, which should then initiate a formal  
investigation. End summary.

Topsites Defined  
-----

13. (SBU) "Topsites," little known to the general public, are  
computer servers that hold tens of thousands of pirated  
software, games, music and movie files. They are central  
repositories for these electronic files and once a pirated  
file is placed on a topsite, they are rapidly shared and  
spread around the world. Hundreds of thousands of copies of  
one song or movie can literally spread like a virus in a  
matter of hours, if not minutes, thanks to a highly developed  
network that rewards uploaders with free downloads (and  
access to other hard to obtain files) and offers prestige to  
those who can obtain the latest hot item, sometimes even  
before it is officially released to the public. Locating and  
penetrating topsites are extremely challenging because people  
can only gain access by proving that they can make a valuable  
contribution and gaining trust over an extended period of  
time. Access to topsite servers is encrypted and shielded  
and the operators respond to indications of investigation by  
legal authorities by destroying critical evidence and rapidly  
moving the servers.

## Lack of Progress in 2008

---

14. (SBU) In the fall of 2007, representatives of the U.S. music industry sought the Embassy's assistance in prosecuting a major topsite located in Korea. Econoff arranged a meeting between the music industry and the Office of International Cooperation in the MOJ where music industry representatives were able to provide some explanation of the issue and advance notice that they intended to seek prosecution against a major Korea-based topsite. Around the same time period, the U.S. movie industry was pursuing its own prosecution of Korean topsites. In December 2007, the movie industry filed criminal complaints against eight separate topsites located in Korea.

15. (SBU) Early in 2008, all the topsite cases were stalled. The Embassy was asked to help, and organized a meeting with the Seoul Prosecutors' Office. Working with Korea-based law firms, industry representatives coordinated closely with Korean prosecutors to move these cases forward. In April 2008, the music industry filed a criminal copyright infringement complaint against the topsite with the Seoul Prosecutors' Office. However, because spring is transfer season for Korean government employees, many of the prosecutors involved were transferred to other divisions. The new prosecutor handling the music industry case referred the case to the Seoul Metropolitan Police. The police then promptly asked for more information so they could send out warning letters to the internet service provider which hosted the topsite. Alarmed music industry representatives chose to

withdraw the case fearing that a police letter would only serve to warn the topsite (which would naturally destroy evidence and disappear), undoing months of efforts to locate them. The movie industry experienced similar disruption in its efforts to seek prosecution. New prosecutors could not identify or locate the topsites. Industry representatives also believe that lack of prosecutorial continuity contributed to confusion about the cases due to the technical nature of investigating and prosecuting topsites.

## An "Obligation and an Intention" to Investigate Topsites

---

16. (SBU) In order to jumpstart the process, Econoff arranged for broad ROKG participation in a second meeting with rightsholder groups to revisit the topsite issue and discuss actual investigative strategies. MOFAT also requested an American law enforcement presence, since they were under the impression that law enforcement had experience in investigating and prosecuting topsites. On the Korean side, representatives of MOFAT, MCST, MOJ (including Seoul District Prosecutors' Office) were present. On the American side, Econoff, representatives from IFPI, MPA and an Embassy-based officer from Immigrations and Customs Enforcement were present. Benjamin Ng, IFPI Regional Counsel, made a presentation on the technical and substantive aspects of the topsite problem.

17. (SBU) The presentation and subsequent discussion clarified for the Korean side the seriousness of the topsite problem, and also concluded with both sides establishing a basic framework for moving forward with investigations. Seoul District Prosecutor Kim Kyung-Soo stated that the presentation helped him realize the extent to which topsites contribute to IPR infringement. However, it became clear during the discussion that the Korean Prosecutors' Office, perhaps wary of its prior difficulties in locating and infiltrating topsites, was not comfortable with initiating an official investigation of a topsite. Mr. Kim stated that his office would prefer for rightsholder groups to file a complaint in order to initiate an investigation, and went as far as to say that if a rightsholder files a complaint in relation to a topsite, the Prosecutors' Office has an "obligation and an intention" to initiate a criminal investigation. Mr. Kim elaborated that if rightsholders and

their representative groups, like IFPI, present their data in a thorough, well-documented, and understandable manner, the Prosecutors' Office would be willing to proceed with such an investigation.

¶18. (SBU) In response to questions about the role of his agency, ICE Attache explained that DHS ICE is currently investigating topsite-related issues in the U.S., and that there are numerous types of investigative methods that can be incorporated to infiltrate topsites. ICE Attache offered to provide training and a tour of the DHS ICE IPR Center in Washington, DC. The tour would allow Korean investigative entities to observe current methods used by law enforcement to combat topsites. It was also brought out that further cooperation between law enforcement and industry would be critical in the identification of these topsites. He also suggested encouraging a rightsholder to purposefully pre-release a song to law enforcement, in order to gain access to a topsite. Law enforcement could use the pre-released song to gain trust and consequent access from the topsite administrator. This idea was met with interest and may be pursued further.

¶19. (SBU) As the meeting progressed, a basic investigative plan emerged in which IFPI performs the more arduous task of infiltrating topsites and gathering the IP addresses necessary to locate them. IFPI will then present an evidence packet, which will include the IP address and the amount of files stored, to the Prosecutors' Office. The Prosecutors' Office will track down the physical location of the topsite, exercising maximum operational discretion. The Prosecutors' Office appears to understand that notifying an Internet Service Provider that one of its clients is under investigation, which it intended to do in the failed investigations of 2008, presents an enormous risk of revealing the investigation to the topsite operator. It is even possible, as Mr. Ng noted, that someone working for the Internet Service Provider itself is operating the topsite.

Comment  
-----

¶10. (SBU) At the conference, the Korean side demonstrated awareness that online piracy is not merely an American problem -- Korean industry is also affected. This summer, Korea's top-grossing movie was leaked to online file-sharing sources before its actual release. Subsequent media attention highlighted the effect of online piracy on Korea's domestic movie industry. After the conference, Econoff received positive comments from MOFAT and industry representatives regarding the conference's substance and results. Post is optimistic that the Korean side will follow through with its intention to investigate topsites. Post will continue to work closely with the ROKG and rightsholder groups to ensure a successful outcome.  
STEPHENS